

John E. MacDonald, Esq. (Attorney ID 011511995)
CONSTANGY, BROOKS, SMITH & PROPHETE, LLP
3120 Princeton Pike, Suite 301
Lawrenceville, NJ 08648
(609) 357-1183 (tel); (609) 844-1102 (fax)
jmacdonald@constangy.com
Attorneys for Defendants Restoration of America, Inc.
and Voter Reference Foundation LLC

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

ATLAS DATA PRIVACY
CORPORATION, *as assignee of*
individuals who are Covered Persons,
JANE DOE-1, *a law enforcement*
officer, JANE DOE-2, *a law*
enforcement officer, EDWIN
MALDONADO, SCOTT MALONEY,
JUSTYNA MALONEY, PATRICK
COLLIGAN, and WILLIAM
SULLIVAN,

Plaintiffs,

v.

RESTORATION OF AMERICA,
VOTER REFERENCE FOUNDATION
LLC, RICHARD ROES 1-10, *fictitious*
names of unknown individuals and ABC
COMPANIES 1-10, *fictitious names of*
unknown entities,

Defendants.

(Electronically Filed)

CIVIL ACTION NO. 1:24-cv-4324

Date: June 14, 2024

Courtroom: Hon. Harvey Bartle III

*[[Proposed] Order, Motion to
Dismiss, and Certification of John E.
MacDonald, Esq. Filed Concurrently
Herewith]*

**DEFENDANTS' MEMORANDUM OF LAW IN SUPPORT OF MOTION
FOR JUDICIAL NOTICE**

Defendants Restoration of America and Voter Reference Foundation LLC respectfully request that the Court take judicial notice of the concurrently-filed exhibits to the Certification of John E. MacDonald, Esq. (the “MacDonald Certification”) pursuant to Federal Rule of Evidence 201 for purposes of its determination of the Defendants’ Motion to Dismiss. The documents for which Defendants seek judicial notice are identified below:

Documents Relating to Restoration of America

Exhibit “A” of the MacDonald Certification consists of a page of Restoration of America’s website identifying its political Action Committee “Restoration PAC.” Attached as Exhibit “B” of the MacDonald Certification is a copy of the registration filing of the “Restoration PAC” political action committee from the on-line digital records of the Federal Election Commission (FEC).

Documents Relating to Voter Reference Foundation LLC

Attached as Exhibit “C” to the MacDonald Certification is a copy of a Voter Reference Foundation LLC website page identifying the organization’s affiliation with Restoration for America. Attached as Exhibit “D” is a copy of the VoteRef.com website page identifying its purpose of, *inter alia*, providing public access to official government data pertaining to elections. Attached as Exhibit “E” of the MacDonald Certification is a copy of a letter to Congressional leaders joined by Voter Reference as identified on the VoterRef.com website.

Legal Argument Favoring Judicial Notice

This Court may take judicial notice over the public records identified above since the authenticity of these records “can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned,” and they are a matter of public record. Fed. R. Evid. 201(b). Courts routinely take judicial notice of public records of government agencies. *See Anspach v. City of Philadelphia*, 503 F.3d 256, 273 n.11 (3d Cir. 2007) (taking judicial notice of FDA Commissioner’s product safety announcement); *Otsuka Pharm. Co., Ltd. v. Torrent Pharm. Ltd., Inc.*, 118 F. Supp. 3d 646, 655 n.7 (D.N.J. 2015) (taking judicial notice of “public records or documents of the FDA,” including a press release); *See also Sun Chem. Corp. v. Am. Home Assurance Co.*, CV 20-6252 (SRC), 2020 WL 5406171, at *7 (D.N.J. Sept. 9, 2020) (taking judicial notice of corporate annual report and associated filings); *Forero v. APM Terminals*, CV 1813754 KMCLW, 2019 WL 6168031, at *3 (D.N.J. Nov. 19, 2019) (taking judicial notice of incorporation status from secretary of state website and SEC filings).

Regarding the corporate website pages identified above, these are offered for limited purposes. For example, two of the corporate webpages are offered simply to identify the affiliation between the two Defendants.¹ Further, the corporate webpages show that political activity is the primary purpose of the two Defendant

¹ The Complaint at Paragraph 30 alleges the two defendants mutually offer data through their internet platforms.

entities. Additionally, the reliability of the webpage content should not be in doubt, since even the Plaintiffs' own Complaint contains a screenshot from the VoteRef.com website (Complaint, Paragraph 40 – See MacDonald Certification, Ex. “F”), the contents of which Plaintiffs assert as a factual allegation.

For purposes of a Rule 12 motion, the court “may consider documents that are attached to or submitted with the complaint, and any matters incorporated by reference or integral to the claim, items subject to judicial notice, matters of public record, orders, and items appearing in the record of the case.” *Buck v. Hampton Twp. Sch. Dist.*, 452 F.3d 256, 260 (3d Cir. 2006) (quoting 5B Charles A. Wright & Arthur R. Miller, *Federal Practice & Procedure* § 1357 (3d ed.2004)). Here, Plaintiffs specifically identify the “voteref.com” website at Paragraph 39 of the Complaint and include a full screenshot of the “voteref.com/voters” website page at Paragraph 40 of the Complaint. This website information is offered in support of Plaintiffs allegations that “Defendants offer and engage in the disclosure of data and information through one or more websites or applications ...” See Complaint at Paragraph 39. Furthermore, the incorporation by reference doctrine allows the Court to consider documents “where the complaint explicitly refers to or relies upon a document, and the defendant attaches an undisputedly authentic copy of that document as an exhibit to a motion to dismiss.” *Hayes v. Wachovia Mortg.*, 2011 WL 5036369, at *2 (D.N.J. Oct. 21, 2011).

For the foregoing reasons, it is respectfully submitted that, for the purposes of its consideration of Defendants' Motion to Dismiss, the Court can and should take judicial notice of the exhibits of the MacDonald Certification.

Dated: June 14, 2024

CONSTANGY, BROOKS, SMITH & PROPHETE LLP

By: /s/ John E. MacDonald

John E. MacDonald (Attorney ID 011511995)

3120 Princeton Pike, Suite 301

Lawrenceville, NJ 08648

jmacdonald@constangy.com

(609) 357-1183 (tel)

(609) 844-1102 (fax)

*Attorneys for Defendants Restoration of America,
Inc. and Voter Reference Foundation LLC*